

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
10

11 ROBERT C. WOMACK,

12 Plaintiff,

13 v.

14 METROPOLITAN TRANSIT SYSTEM, et
al.,

15 Defendants.
16

Case No. 09cv2679 BTM(NLS)

**ORDER DENYING MOTION FOR
ATTORNEY'S FEES AND DENYING
RULE 60(b)(2) MOTION**

17 Defendants have filed a Motion for attorney's fees under 28 U.S.C. § 1927. Plaintiff
18 has filed a motion to vacate judgment under Fed. R. Civ. P. 60(b)(2). For the reasons
19 discussed below, Defendants' motion for attorney's fees is **DENIED** and Plaintiff's Rule 60(b)
20 motion is **DENIED**.
21

22 **I. PROCEDURAL BACKGROUND**

23 In an 18-page order filed on February 28, 2011, the Court granted summary judgment
24 in favor of Defendants on all of Plaintiff's claims. On March 16, 2011, Plaintiff filed a motion
25 to alter or amend judgment pursuant to Fed. R. Civ. P. 59(e). In an order filed on May 24,
26 2011, the Court denied the motion to alter or amend judgment. The Court explained that for
27 the most part, Plaintiff was rehashing the arguments he made in opposition to the motion for
28 summary judgment. The Court concluded that Plaintiff had not come forward with any "new

1 evidence” that would warrant relief and had not established that the Court had committed
2 errors of law or fact upon which the judgment rests. The Court noted that even if it were to
3 construe Plaintiff’s motion as a motion for relief from a judgment or order under Fed. R. Civ.
4 P. 60(b), Plaintiff had not established a basis for relief.

5 On July 27, 2011, Plaintiff filed a motion for relief from judgment pursuant to Fed. R.
6 Civ. P. 60(b)(3). In his motion, Plaintiff repeated his arguments made in opposition to the
7 motion for summary judgment and accused defendants, their counsel, the arbitrator, and
8 others of lying and conspiring against him. In an order filed on September 6, 2011, the Court
9 denied Plaintiff’s motion, holding that Plaintiff has not produced clear or convincing evidence
10 of fraud or misconduct during the course of this litigation.

11 On September 22, 2011, Defendants filed their motion for attorney’s fees under 28
12 U.S.C. § 1927.

13 On September 28, 2011, Plaintiff filed a motion for reconsideration of the Court’s
14 September 6, 2011 Order. In an order filed on October 4, 2011, the Court denied Plaintiff’s
15 motion for reconsideration. The Court stated: “It has reached the point where Plaintiff and
16 the Court will have to agree to respectfully disagree. . . . Continued filings of Rule 60(b)
17 motions and motions for reconsideration will not be fruitful. At this juncture, Plaintiff may
18 want to investigate the option of appealing to the Ninth Circuit Court of Appeals.”

19 On October 27, 2011, Plaintiff filed his motion to vacate judgment under Fed. R. Civ.
20 P. 60(b)(2).

21 22 **II. DISCUSSION**

23 **A. Motion for Attorney’s Fees**

24 Defendants seek an award of the attorney’s fees they incurred in opposing Plaintiff’s
25 Rule 60(b)(3) motion.

26 Under 28 U.S.C. § 1927, [a]ny attorney or other person admitted to conduct cases in
27 any court of the United States or any Territory thereof who so multiplies the proceedings in
28 any case unreasonably and vexatiously may be required by the court to satisfy personally

1 the excess costs, expenses, and attorneys' fees reasonably incurred because of such
2 conduct.” Sanctions under § 1927 are warranted when an attorney or pro se plaintiff
3 intentionally or recklessly raises a frivolous argument which results in the multiplication of
4 proceedings. In re Girardi, 611 F.3d 1027, 1061 (9th Cir. 2010).

5 Defendants argue that Plaintiff's 60(b)(3) motion filed on July 27, 2011, was frivolous
6 because the Court had already denied Plaintiff's Rule 59(e) motion to amend or alter
7 judgment. Defendants argue that the Court implied that Plaintiff should not file a Rule 60
8 motion.

9 Although Plaintiff's 60(b)(3) motion was largely based on the same arguments that
10 were raised in his Rule 59(e) motion, the Court gives Plaintiff the benefit of the doubt and
11 does not find that Plaintiff was acting in bad faith or recklessly raising a frivolous argument.
12 Plaintiff may have believed that he was providing additional information or clarifying his
13 arguments in the 60(b)(3) motion. Therefore, the Court denies Defendants' instant motion
14 for attorney's fees under § 1927. However, as discussed below, the Court's order is without
15 prejudice to Defendants bringing another motion for fees in the event that Plaintiff brings
16 another meritless Rule 60 motion or motion for reconsideration after the filing of this Order.

17
18 B. Rule 60(b)(2) motion

19 Plaintiff claims that he is entitled to relief under Rule 60(b)(2) based on newly
20 discovered evidence. However, Plaintiff has not produced any new evidence that warrants
21 relief. The only arguably new evidence pertains to Plaintiff's new-found knowledge that his
22 union, the Transit Enforcement Officers Association of San Diego (“TEOA”) is not covered
23 by the NLRA. Apparently, because San Diego Trolley, Inc., is a public entity, the union
24 elections are conducted by the California State Mediation and Conciliation Service (“SMCS”)
25 not the NLRB. (Defendants Opp. at 3:15-23.) However, this fact does not change the
26 Court's decision. Although the Labor Management Relations Act would not apply to the
27 TEOA, the Court's analysis is still the same regarding the ultimate issue of whether there was
28

1 just cause for Plaintiff's termination.¹

2 Plaintiff has not established grounds for relief under Rule 60(b)(2). Therefore,
3 Plaintiff's motion is **DENIED**.

4 The Court cautions Plaintiff that any further Rule 60 motions or motions for
5 reconsideration that lack merit may be grounds for sanctions under 28 U.S.C. § 1927.
6 Although the Court denied Defendants' instant motion for attorney's fees incurred in opposing
7 Plaintiff's *first* 60(b) motion, the Court cannot continue to show leniency for repeated filings
8 of meritless Rule 60(b) motions and motions for reconsideration. In the Court's October 4,
9 2011 Order, the Court explained, "Continued filings of Rule 60(b) motions and motions for
10 reconsideration will not be fruitful. At this juncture, Plaintiff may want to investigate the option
11 of appealing to the Ninth Circuit Court of Appeals." Yet Plaintiff filed another Rule 60(b)
12 motion, which the Court now denies. Repeated filings which reiterate the same arguments
13 that have already been rejected by the Court will not change the outcome of this lawsuit and
14 will expose Plaintiff to liability for attorney's fees incurred by Defendants in opposing the
15 motions.

16 17 **III. CONCLUSION**

18 For the reasons discussed above, Defendants' motion for attorney's fees is **DENIED**
19 and Plaintiff's Rule 60(b)(2) motion is **DENIED**.

20 **IT IS SO ORDERED.**

21 DATED: February 27, 2012

22 
23 BARRY TED MOSKOWITZ, Chief Judge
24 United States District Court
25

26 ¹ Plaintiff also raises a new argument that he was entitled to a Skelly hearing before
27 he was suspended for fourteen days with pay. Plaintiff did not raise this argument in the
28 FAC. Moreover, although there are California cases holding that due process requires a
hearing before an extended suspension *without pay*, see, e.g., Bostean v. Los Angeles
Unified School Dist., 63 Cal. App. 4th 95 (1998), the Court has not seen any cases requiring
a pre-deprivation hearing for a fourteen-day suspension *with pay*.